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ARRANGEMENTS FOR INTERGOVERNMENTAL MEETINGS

EFFECTIVE PARTICIPATION IN THE CONVENTION PROCESS

Note by the secretariat*

Summary

At the sixteenth session of the Subsidiary Body for Implementation (SBI), some Parties expressed concern about participation of observer organizations in intersessional workshops, as well as participation of observers in meetings of limited-membership bodies constituted under the Convention and the Kyoto Protocol. The SBI agreed to include this matter as an item on the agenda for its seventeenth session, and invited Parties to submit views on this matter. The views submitted by Parties are contained in document FCCC/SBI/2002/MISC.8.

This note sets out current practice concerning participation of observer organizations in intersessional workshops, and participation of observers in meetings of limited-membership bodies constituted under the Convention and the Protocol. Options and proposals for enhancing participation are presented for consideration by the SBI.

* This document has been submitted at this time because of the need to undertake extensive internal consultations.

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I. INTRODUCTION

A. Mandate

1. The Subsidiary Body for Implementation (SBI), at its sixteenth session, took note of views expressed by some Parties concerning "Effective participation in the Convention process" and agreed to include this as an item on the agenda of its seventeenth session (see FCCC/SBI/2002/6, para. 5). The SBI also invited Parties to submit views on this matter; submissions from Parties are contained in document FCCC/SBI/2002/MISC.8.

B. Scope of the note

2. This document aims to facilitate further discussion during the seventeenth session of the SBI (SBI 17) on participation in the Convention process. It sets out current practice concerning participation of observer organizations in intersessional workshops, and participation of observers in meetings of limited-membership bodies constituted under the Convention and the Protocol. Options and proposals for enhancing participation are presented for consideration.

C. Possible action by the Subsidiary Body for Implementation

3. The SBI is invited to consider the information contained in this note, as well as the views submitted by Parties on this matter, and to provide further guidance to Parties and the secretariat in the form of conclusions concerning, as appropriate:

(a) Participation of observer organizations in intersessional workshops;

(b) Participation of observers in meetings of expert groups constituted under the Convention;

(c) Participation of observers in meetings of the Executive Board of the clean development mechanism.[1]

II. BACKGROUND

4. Participation of observers is one of the fundamental features of the Convention process. The categories of observers that may participate in the sessions of the Conference of the Parties (COP) and the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/MOP)[2] are:

(a) The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention;

(b) Any national or international, governmental or non-governmental body or agency, which is qualified in matters covered by the Convention or the Protocol, unless at ast one third of the Parties present object.

In addition, the Protocol provides that Parties to the Convention that are not Parties to the Protocol may participate as observers in the proceedings of any session of the COP/MOP.[3]

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[1] The provisional agenda for the eighth session of the Conference of the Parties includes an item entitled "Report of the executive board of the clean development mechanism" (see FCCC/CP/2002/1 and Add.1). The report of the Executive Board to the COP covers issues relating to participation of observers (see FCCC/CP/2002/3).

[2] See Article 7, paragraph 6, of the Convention and Article 13, paragraph 8, of the Protocol.

[3] See Article 13, paragraph 2, of the Protocol.

5. The Convention and the Protocol mandate the COP and the COP/MOP, respectively, to seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies.[4] In addition, the admission and participation of observers is subject to the rules of procedure. Rules 6 and 7 of the draft rules of procedure of the COP being applied[5] provide that the observers mentioned in Article 7, paragraph 6, of the Convention may, upon the invitation of the President, participate, without the right to vote, in the proceedings of any session, unless at least one third of the Parties present at the session object. In the case of governmental or non-governmental bodies or agencies, participation is limited to matters of direct concern to them.

6. Furthermore, by decision 18/CP.4,[6] the COP decided that presiding officers of Convention bodies may invite representatives of intergovernmental and non-governmental organizations to attend, as observers, any open-ended contact group established under the Convention process. To facilitate participation of observers:

(a) Official documents of sessions of the COP and the subsidiary bodies are made publicly available during the session, and on the web site of the secretariat;

(b) Notifications and provisional agendas of upcoming sessions are sent to Parties and observer organizations in advance of the sessions;

(c) A broad range of intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) are regularly admitted to attend sessions of the COP and the subsidiary bodies, and make information available informally;

(d) Observer States and organizations are permitted to make statements during plenary sessions;

(e) Sessions of the COP are webcast and recent sessions are archived on the web site of the secretariat.

7. Participation in the Convention process is both flexible and, on the whole, inclusive. The COP enjoys the benefits of receiving inputs from a wide range of actors and, accordingly, is perceived as having a high level of legitimacy and credibility.

III. PARTICIPATION IN THE CONVENTION PROCESS

8. During SBI 16, some Parties expressed concerns about, inter alia:

(a) The right of Parties to take part as observers in meetings of limited-membership bodies established under the Convention and the Protocol, including to be physically present in the meeting rooms of these bodies;

(b) The opportunities afforded observer organizations to participate as observers in meetings of limited-membership bodies and at intersessional workshops;

(c) Timely notification of and availability of documentation for meetings of limited-membership bodies and intersessional workshops to observers.

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[4] See Article 7, paragraph 2 (l), of the Convention and Article 13, paragraph 4 (i), of the Protocol.

[5] See FCCC/CP/1996/2.

[6] See FCCC/CP/1998/16/Add.1.

9. In considering how to promote transparency and effective participation in the process, Parties are invited to reflect on the nature of the UNFCCC process and its various components. Small informal workshops and expert groups have emerged as supplements to the large intergovernmental sessions. If participation in workshops and meetings of expert groups becomes too large, the utility of these groups could be put at risk and questions could be raised as to their raison-d'être. If open-ended participation is the objective, the sessions of the COP and the subsidiary bodies are available for that purpose.

A. Intersessional workshops

1. Observer organizations

10. More than 500 IGOs and NGOs are currently admitted as observers to sessions of the COP and the subsidiary bodies, and these sessions have attracted more than 3,000 representatives of these organizations. They include environmental, business, trade union, faith and academic organizations, as well as local government and municipal authorities, parliamentarians and indigenous peoples' organizations.

11. To facilitate the interaction between the secretariat and these observer organizations, an informal constituency system has been used recognizing, at present, four categories of observer organization: environmental groups, business and industry organizations, indigenous peoples' organizations, and local government and municipal authorities.

2. Participation of observer organizations

12. Intersessional workshops are organized pursuant to decisions by the COP and the subsidiary bodies. Workshops provide an opportunity for the informal exchange of information among Parties, and help to build consensus on possible courses of action outside the more political environment of a formal session of the COP or the subsidiary bodies. They are not negotiating sessions and results are reported to the COP or the subsidiary bodies for consideration and action.

13. Participation in workshops is by invitation. Invitations are sent by the secretariat, on behalf of the chairs of the subsidiary bodies, to representatives of Parties, experts or resource persons, and observer organizations. Invitations to observer organizations are issued to focal points of the constituencies, who in turn inform their respective constituencies. Each constituency then carries out a selection process to identify participants for the workshops. These procedures have generally worked in practice and individual concerns have been addressed by the secretariat as they arise.

14. Informal reports of some workshops have been made publicly available by independent reporting agencies which have been invited to attend these workshops.

3. Options for enhancing participation

15. Some Parties have expressed concern that opportunities for participation by observer organizations in intersessional workshops are limited. When addressing this concern, it must be borne in mind that each workshop is different in purpose, interest and available resources, and the Chair of the subsidiary body is responsible for ensuring that the workshop is conducted in an efficient manner to meet its objectives. The need for efficiency and effectiveness of workshops implies that the number of participants must be limited.

16. Options available to address this concern include:

(a) Requesting the secretariat to improve its use of the constituency system for workshop nominations to ensure that the system is more inclusive and transparent, recognizing that the secretariat is not in a position to select observer organizations to participate in workshops;

(b) Requesting the secretariat to publish on its web site the procedures for the participation of observer organizations in workshops;

(c) Requesting the chairs of the subsidiary bodies to review the number of invitations sent to observers. Care would, however, be needed to ensure that an appropriate balance is maintained between Parties and observers;

(d) Requesting the secretariat to arrange for independent reporting agencies to provide summary reports on workshops which could be speedily made available on the web site of the secretariat. (This would cost US$ 8,000 for a two-day workshop in Bonn. Funds for this would need to be identified.)

17. A further concern relates to the timely issuance of notifications and availability of documentation for workshops. The increasing difficulties in securing funding for the growing number of workshops have resulted in delays in confirming whether a workshop will actually be held, and in issuing the notification and necessary documentation. To address this concern, the secretariat would publish, on its web site, the notification and documentation for each workshop, as soon as the workshop is confirmed and the documentation is available.

B. Meetings of bodies constituted under the Convention

1. Expert groups

18. The COP has established a number of expert groups under the Convention. These expert groups are limited in membership and duration, with agreed mandates, and their purpose is to provide advice and make recommendations on specific issues to Parties without being vested with decision-making authority. The expert groups are:

(a) The Consultative Group of Experts on National Communications from Parties, not included in Annex I to the Convention (CGE);

(b) The Expert Group on Technology Transfer (EGTT);

(c) The Least Developed Countries Expert Group (LEG).

19. The 24-member CGE was established at COP 5 and its mandate was extended at COP 7.[7] Its objective is to improve the preparation of national communications by Parties not included in Annex I to the Convention. It is mandated, inter alia, to exchange relevant information and experience in order to identify difficulties encountered in the preparation of national communications and the application of related methodologies and guidelines. Reports of the meetings of the CGE are submitted to the SBI for consideration and action.

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[7] See decisions 8/CP.5 (FCCC/CP/1999/6/Add.1) and 31/CP.7 (FCCC/CP/2001/13/Add.4). The mandate and terms of reference of the CGE will be reviewed at COP 8.

20. The 20-member EGTT was established at COP 7.[8] Its objective is to enhance the implementation of Article 4, paragraph 5, of the Convention, by analysing and identifying ways to facilitate and advance technology transfer. The EGTT submits its reports to the Subsidiary Body for Scientific and Technological Advice (SBSTA) for consideration and action.

21. The 12-member LEG was also established at COP 7.[9] Its objective is to provide advice on the preparation and implementation strategy for national adaptation programmes of action (NAPAs) developed by least developed countries (LDCs). It is mandated, inter alia, to provide technical advice on the identification of relevant data and information, on capacity-building needs for LDCs, and on mainstreaming NAPAs into development planning. Reports of the meetings of the LEG are submitted to the SBI for consideration and action.

2. Participation of observers

22. The mandates of the expert groups do not address participation of observers in meetings, and do not request that the expert groups develop their own rules of procedure. The groups have thus far considered themselves to be limited-membership bodies that are normally closed to observers.

23. The terms of reference of the LEG allow the group to "draw upon additional expertise as deemed necessary." The work programme requires the Chair of the LEG to approve proposals for inviting additional experts, in consultation with LEG members. However, such additional expertise is to be used judiciously, with clear terms of reference and on an ad hoc basis. The use of such additional experts effectively allows input by observers.

24. Exceptionally, during the preparatory meeting of the EGTT, held in Seoul in April 2002, representatives of Parties were allowed to attend as observers. This decision was taken because the meeting was held in conjunction with two workshops organized by the secretariat. However, it was taken expressly on a one-time basis and was not designed to set a precedent. Also, at its first meeting held in conjunction with SBI 16, the EGTT invited two additional representatives of IGOs to serve as "resource persons."

3. Options for enhancing participation

25. Some Parties have expressed concern about the lack of opportunity for observers to participate in meetings of experts groups, including to be physically present in the meeting rooms. Participation of observers in meetings of expert groups would raise two issues. First, expert groups should be able to carry out their work in an efficient and business-like atmosphere; open-ended participation by observers could affect this working environment. Second, the fact that not all Parties or observer organizations have the capacity to send observers to meetings would affect the balance of participation.

26. The COP has not mandated the expert groups to develop their own rules of procedure. This raises the question as to whether and/or how the draft rules of procedure of the COP being applied should be applied by expert groups. Parties may wish to consider further whether the rules of procedure were intended to apply to limited-membership bodies or only to open-ended bodies or "working groups" as defined by rule 2 of the draft rules. In this context, particular consideration could be given to the authority and responsibility of presiding officers for the conduct of meetings, including issues of participation.

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[8] See decision 4/CP.7 (FCCC/CP/2001/13/Add.1). The mandate of the EGTT runs to COP 12.

[9] See decision 29/CP.7 (FCCC/CP/2001/13/Add.4). The mandate of the LEG runs to COP 9.

27. Among the options for facilitating participation, while keeping expert group meetings **closed,** are:

(a) To request the chairs of the expert groups, drawing on the advice of the members, to consider options for improving participation of observers;

(b) To invite the expert groups to periodically convene informal open meeting with observers;

(c) To invite Parties and observer organizations to submit comments to the expert groups on particular items being addressed by the expert group. These views would be submitted to the secretariat, which would forward them to members of expert group. These views could also be included on the web site of the secretariat but would not be published as official UNFCCC documents;

(d) To request that non-confidential documentation of the meetings is available on the web site of the secretariat;

(e) To invite the expert groups to explore options for webcasting all or parts of the meetings and assess the implications. The cost of webcasting a two-day meeting of a constituted body ranges from US$ 4,500 to 7,000 for a meeting held in Bonn, and from US$ 8,500 to 11,000 for a meeting held away from Bonn (including costs for staff travel, rental of necessary equipment and Internet services, depending on the venue). No budget currently exists for this purpose.

28. If Parties consider that it would be useful for meetings of expert groups to be **open** so that observers could be physically present, then guidance will be needed on the modalities for observer participation and on how to ensure broad geographic and regional representation, recognizing that no resources are currently available for this purpose. In this regard:

(a) Invitations to participate as observers could be sent to representatives of Parties and focal points of constituencies of observer organizations (the cost for participation of a representative to a two-day meeting of a constituted body could be up to US$ 4,000, for which no funding is currently available);

(b) In cases where there is a need to limit numbers, these invitations could be issued in consultation with the relevant groups;

(c) The chairs of the expert groups should retain the discretion to close particular meetings to observers in cases where confidential matters need to be discussed or when the group decides that this would be more effective.

C. Meetings of bodies constituted under the Kyoto Protocol

1. Constituted bodies

29. The Protocol provides for the establishment of a number of bodies to carry out specific activities. As elaborated in the Marrakesh Accords,[10] these bodies have specific mandates, with decision-making functions, and membership is limited. They include:

(a) The Compliance Committee;

(b) The Executive Board of the clean development mechanism (CDM);

(c) The Article 6 Supervisory Committee.

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[10] See FCCC/CP/2002/13/Add.1–4.

30. Of these bodies, the Executive Board of the CDM is now operational and, to date, has held five meetings. Some Parties have expressed concern about the participation of observers in the meetings of the Executive Board. In addition, some Parties have raised the issue of potential implications of the entry into force of the Protocol for participation as observers by Parties to the Convention that are not Parties to the Protocol. The issues below focus on the Executive Board of the CDM, but it should be borne in mind that these issues will also affect the other bodies constituted under the Protocol.

2. Participation of observers in meetings of the Executive Board of the clean development mechanism

31. The Protocol states that the CDM shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/MOP) and supervised by the Executive Board.[11] COP 7 brought the Executive Board (comprising 10 members and 10 alternates) into operation to facilitate a prompt start of the CDM. The mandate of the Executive Board specifies that it should, inter alia, make recommendations to the COP/MOP on further modalities and procedures for the CDM and the designation of operational entities, and supervise the observance of applicable modalities and procedures. The Executive Board is also responsible for the accreditation of operational entities. Pending entry into force of the Protocol, the COP has assumed the responsibilities of the COP/MOP. The annual reports of the Executive Board are submitted to the COP for review.

32. The annex to decision 17/CP.7 states that meetings of the Executive Board "shall be open to attendance, as observers, by all Parties and by all UNFCCC accredited observers and stakeholders, except where otherwise decided by the Executive Board."[12] Detailed information on the facilitation of attendance by observers is contained in the report of the Executive Board of the CDM to the COP at its eighth session.[13]

33. To ensure that the meetings of the Executive Board are conducted efficiently and in a business-like atmosphere and, at the same time, to facilitate participation of observers:

(a) Meetings of the Executive Board are webcast via the web site of the secretariat;

(b) Facilities are provided for observers to watch the proceedings via closed circuit television (CCTV) in a room located next to the meeting room;

(c) Documentation for the meetings of the Executive Board is available on the web site of the secretariat;

(d) Observers may, upon invitation by the Executive Board, make presentations relating to matters under consideration by the Board;

(e) Parties, and UNFCCC observer organizations and stakeholders can provide comments on how a proposed activity fulfils the validation requirements;

(f) Public comments and input are sought on some matters addressed by the Executive Board.

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[11] See Article 12, paragraph 4, of the Protocol.

[12] See decision 17/CP.7, annex, paragraph 16 (FCCC/CP/2001/13/Add.2).

[13] See FCCC/CP/2002/3.

3. Options for enhancing participation in meetings of the Executive Board of the clean development mechanism

34. Two concerns have been raised about observer participation in meetings of the CDM Executive Board. The first is whether the current draft rules of procedure of the Executive Board of the CDM are fully consistent with the draft rules of procedure being applied by the COP. Recognizing the distinct character of the CDM, decision 17/CP.7 mandates the executive board to develop its own rules of procedure.

35. A second concern expressed by some Parties is whether electronic broadcasting (through webcast and CCTV) of meetings of the Executive Board provides sufficient opportunity for observer attendance. When considering this matter, Parties should consider how to ensure that the CDM can operate efficiently in taking business-like decisions, while ensuring transparency and providing opportunity for effective input from observers in decision-making. In this regard, the modalities and procedures for obtaining inputs from observers and the public, contained in the annex to decision 17/CP.7, provide a variety of options for participation. A further consideration is the desirability to provide the Executive Board with sufficient flexibility to tailor participation to specific circumstances.

36. In considering options for enhancing participation, the Executive Board could be requested to:

(a) Clarify the circumstances and modalities under which observers may be invited to be physically present in the room where the Executive Board is meeting, especially when matters of particular interest to the observer is being discussed;

(b) Periodically review the practice of placing a limit of 50 participants who can view the proceedings on CCTV, based on experience;

(c) Invite the Chair to brief observers at the end of each meeting;

(d) Periodically convene informal open meetings with observers;

(e) Consider convening meetings at venues that would allow greater attendance by representatives of Parties. Holding meetings in, for example, Geneva or New York, would allow Parties to send representatives from their missions to the United Nations as observers. Convening meetings away from Bonn would, however, incur additional travel and administrative costs for the budget of the CDM, which could range from US$ 30,000 to 40,000 per meeting (including costs for staff travel, rental of necessary equipment, Internet services and rental of meeting rooms, depending on the venue).

37. If Parties consider that it would be useful for observers to be physically present in the meeting rooms of the Executive Board, then guidance will be needed on the modalities for observer participation and on how to ensure broad geographic and regional representation, recognizing that no resources are currently available for this purpose.

38. The COP is expected, at its eighth session, to consider the report of the Executive Board of the CDM, which includes issues relating to participation by observers.[14] Parties may wish to discuss options for enhancing participation in this context.

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[14] See FCCC/CP/2002/1 and Add.1, paragraphs 77–81.